

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

MARCUS R. DEAL,

Plaintiff,

v.

Case No. 3:21cv3547-MCR-HTC

G. PUGH, et al.,

Defendants.

ORDER

Having resolved Defendants' motion for summary judgment, *see* ECF Doc. 58, the Court finds this matter is ready to be set for trial. This Order sets forth the procedures and requirements for the parties' pretrial narratives and other trial materials.

Also, the Court finds it appropriate to *sua sponte* post a request for volunteer counsel and will direct the clerk to issue a notice to all attorneys registered with the Court's electronic filing system inviting them to represent Plaintiff *pro bono*. However, Plaintiff is advised that the fact that the Court is requesting volunteer counsel does not mean that any counsel will actually agree to represent Plaintiff in this case. As the Court has repeatedly stated, there is no constitutional right to counsel for civil plaintiffs and the Court has no authority to require an unwilling

attorney to represent an indigent litigant. *See Mallard v. U.S. Dist. Court for S. Dist. of Iowa*, 490 U.S. 296, 300–08 (1989) (holding that the *in forma pauperis* statute, 28 U.S.C. § 1915(d) does not authorize compulsory appointments). **Plaintiff, therefore, is advised to continue to prosecute his case and to comply with all Court orders, including the deadline set forth below.**

Finally, the parties are reminded that they may consent to the referral of this case to the United States Magistrate Judge for trial and for the entry of a final judgment. *See* ECF Doc. 32 at 4. **Consenting to magistrate jurisdiction does not change or alter either parties' right to a jury trial.** Also, consenting to magistrate judge jurisdiction will allow the parties more flexibility with their trial date and will result in a more expedient resolution. If the parties wish to consent, they may execute the attached consent form, and return it to the clerk. For more information about consenting, please see the Court's Local Rules and 28 U.S.C. § 636(c).

Accordingly, it is ORDERED:

1. On or before **Monday, March 6, 2023**, Plaintiff shall file (and serve on Defendants) the following:
 - A. A narrative written statement of the facts that will be presented on his behalf through oral or documentary evidence at trial.
 - B. A list of all exhibits Plaintiff will offer into evidence at trial.

C. A list of the names and addresses of all the witnesses Plaintiff intends to call and a succinct summary of the expected testimony of each witness. Plaintiff shall indicate what witnesses, if any, are inmates.¹

D. Plaintiff shall serve upon counsel for the Defendants a complete copy of all the foregoing and shall include in the original document filed with the clerk a certificate stating the date a true and correct copy was mailed to Defendants' counsel.

2. Within **twenty-one (21) days** after the docketing of the Plaintiff's materials on CM/ECF, Defendants shall file (and serve on Plaintiff) the following:

A. A narrative written statement of the facts that will be presented on their behalf through oral or documentary evidence at trial.

B. A list of all exhibits Defendants will offer into evidence at trial.

C. A list of the names and addresses of all the witnesses Defendants intend to call and a succinct summary of the expected testimony of each witness.²

¹ Although the Court may, upon request, issue writs *ad testificandum* in a case of this nature to procure the presence of inmate witnesses at trial, there is no authority to allocate funds to pay for the attendance of witnesses if their attendance is procured by subpoena. The Court will not issue subpoenas for witnesses who cannot be compensated for their attendance.

² Failure of the parties to fully disclose in the pretrial narrative statement or at the pretrial conference the substance of the evidence to be offered at trial may result in exclusion of that evidence at trial. The only exceptions will be (a) matters which the Court determines were not reasonably discoverable at the time of the pretrial conference, (b) privileged matters, and (c) matters to be used solely for impeachment of a witness.

3. The clerk shall send Plaintiff a copy of the magistrate judge consent form along with this Order.

4. The clerk must issue a notice soliciting a volunteer attorney in this case. Said notice must be transmitted to all attorneys registered with the Court's electronic filing system and must also be published on the Court's website. The notice must state:

This is a notice of an opportunity to provide pro bono representation in the case of *Deal v. Pugh, et al.*, Case No. 3:21cv3547-MCR-HTC.

Plaintiff is a prisoner in the custody of the Florida Department of Corrections alleging Eighth Amendment violations against six Defendants, all of whom are correctional officers. Plaintiff claims the officers used excessive force against him during a cell transfer, without any provocation and despite Plaintiff's compliance with their orders. As a result of the alleged incident, Plaintiff contends he suffered pain and injuries, including swelling to his face, a laceration, and a fractured hand. Further detail is provided in Plaintiff's Amended Complaint, ECF Doc. 29.

The period for conducting discovery has concluded, the Court has addressed all dispositive motions, and the case is now ready to be set for trial. The deadline for Plaintiff to submit his pretrial materials is Monday, March 6, 2023. The Court, however, will consider continuances, as may be necessary, upon proper showing, should counsel appear for Plaintiff.

Public funds are not available for the payment of attorney's fees. Fees may be recoverable under applicable law if Plaintiff ultimately prevails. *See* 42 U.S.C. § 1988(b); *World Outreach Conf. Ctr. v. City of Chi.*, 234 F. Supp. 3d 904, 909 (N.D. Ill. 2017). Limited funds are sometimes available from the district's Bench and Bar Fund for the payment of out-of-pocket expenses incurred by an attorney providing representation of this type.

Members of the District's bar will be afforded access to the electronic docket without charge for the purpose of considering whether to undertake the representation. An attorney who wishes to provide representation may contact

Plaintiff³ directly to obtain approval for representation and, after obtaining approval, shall file a notice of appearance.

DONE AND ORDERED this 13th day of February, 2023.

/s/ Hope Thai Cannon

**HOPE THAI CANNON
UNITED STATES MAGISTRATE JUDGE**

³ Plaintiff is currently confined at Suwanee Correctional Institution in Live Oak, Florida.

UNITED STATES DISTRICT COURT

for the

Northern District of Florida

Marcus R. Deal

Plaintiff

v.

G. Pugh, et al.,

Defendant

Civil Action No. 3:21cv3547-MCR-HTC

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

Parties' printed names

Signatures of parties or attorneys

Dates

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Reference Order

IT IS ORDERED: This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: _____

District Judge's signature

Printed name and title

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.